



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2004

Ms. Laura Garza Jimenez  
Nueces County Attorney  
Nueces County  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2004-3494

Dear Ms. Jimenez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200312.

Nueces County (the "county") received a request for employment information pertaining to two specified individuals. As you acknowledge, the requestor specifically indicates in her request that she is not seeking either individual's home address or social security number.<sup>1</sup> You state that the county is providing the requestor with some of the requested information. You claim, however, that portions of the requested information are excepted from disclosure pursuant to sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 845.115(a) of the Government Code.<sup>2</sup> Section 845.115(a) protects certain information contained in records

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<sup>1</sup> Because portions of the submitted information revealing the specified individuals' home addresses and social security numbers are not responsive to the request, the county need not provide the requestor with this particular information in response to this ruling.

<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

that are in the custody of the retirement system concerning an individual member, retiree, annuitant, or beneficiary. *See* Gov't Code § 845.115(a). We note, however, that the documents at issue here are in the custody of the county, not the retirement system. Accordingly, we conclude that the county may not withhold any of the submitted records pursuant to section 552.101 of the Government Code in conjunction with section 845.115(a) of the Government Code.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with federal law. We note that section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted I-9 forms in response to this request for information would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the county may only release the I-9 forms that we have marked in compliance with the federal laws and regulations governing the employment verification system. We also note that certain tax return information is confidential under section 6103(a) of title 26 of the United States Code. Accordingly, we conclude that the county must also withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

In addition, you claim that portions of the submitted information are excepted from disclosure pursuant to section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). Section 552.102(a) is generally applicable to information relating to a public official or employee. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be excepted from disclosure under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976) for information claimed to be protected from disclosure by the common-law right to privacy as incorporated by section 552.101 of the Government Code. *See also Indus. Found.*, 540 S.W.2d at 683-85. Accordingly, we will consider your section 552.101 and section 552.102 common-law privacy claims together.

Information is protected from disclosure by the common-law right to privacy if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found.*, 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the

Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

This office has since concluded that the following types of information are also excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 545 (1990), 523 (1989) (individual's mortgage payments, assets, bills, and credit history), certain personal choices relating to financial transactions between the individual and the governmental body, *see* Open Records Decision No. 600 (1992) (designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Based on our review of your arguments and the submitted information, we find that portions of this information are protected by the common-law right to privacy and, thus, must be withheld pursuant to sections 552.101 and 552.102 of the Government Code. We have marked this information accordingly.

Further, you claim that portions of the submitted information are excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential pursuant to section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time that the request for it is received by a governmental body. *See* Open Records Decision No. 530 at 5 (1989). Thus, the county may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received by the county. The county may not withhold such information under section 552.117(a)(1) for an employee who did not make a timely election to keep the information confidential. You state, and provide documentation showing, that one of the individuals who is the subject of this request elected confidentiality for her home telephone number prior to the date that the county received this request. Accordingly, we conclude that the county must withhold the marked home telephone number of this particular individual pursuant to section 552.117(a)(1). We also conclude that the county must withhold the additional information that we have marked under section 552.117(a)(1) of the Government Code provided that the current or former

employee with whom the information is associated timely elected under section 552.024 to keep that information confidential. Otherwise, the county must release this particular marked information to the requestor.

Finally, you claim that portions of the submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the county must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

In summary, the county may only release the I-9 forms that we have marked in compliance with the federal laws and regulations governing the employment verification system. The county must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code and the common-law right to privacy. The county must withhold, pursuant to section 552.117(a)(1) of the Government Code, the marked home telephone number associated with the individual who made a timely election of confidentiality for this information as evidenced by the submitted documents. The county must also withhold the additional information that we have marked under section 552.117(a)(1) provided that the current or former employee with whom it is associated timely elected under section 552.024 to keep that information confidential. The county must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code. The county must release to the requestor the remaining submitted information that is responsive to the request.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

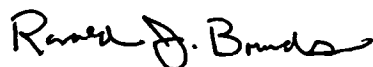
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 200312

Enc. Marked documents

c: Ms. Janell Ross  
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(w/o enclosures)